

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 512 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PARMANAND MANEKLAL KAJIWALA

Versus

STATE OF GUJARAT

Appearance:

MR AK CLERK for Petitioner
MR SP HASURKAR for Respondent No. 1
MR KN RAVAL for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/04/2000

ORAL JUDGEMENT

Learned Advocate Mr.A.K.Clerk appearing on behalf of petitioner, Learned A.G.P. Shri Gharania appearing on behalf of respondent No.1 and 2 and Learned Advocate

Ms.P.J.Davawala appearing on behalf of respondent No.3. In the present petition the order passed by Commissioner of Payment dated 12th August, 1993 is challenged by petitioner with a prayer so far as it denys wages and other benefits to the petitioner up to 8th November, 1985 and further prayer has been made against the respondent No.3 to treat the petitioner as reemploy as a clerk in Costing Department from the date from which persons junior to the petitioner were reemployed by the Corporation and directing the Corporation to pay to the petitioner salary, allowances and all other consequential benefits for that basis from that date 27th August, 1989 the date of superannuation with running interest at 21%. Against the said petition none of the respondent have filed any counter and denied the averments made in the petition.

The brief facts of the present petition are as under :

The petitioner joined the services of Ahmedabad Cotton Manufacturing Company Limited as a Costing Clerk on 21st February, 1971. The date of birth of the petitioner is 28th August, 1927. The petitioner was promoted as a permanent Semi Clerk and thereafter as a clerk on 1st March, 1973. The petitioner was dismissed from services on 17th June, 1983. The said order of dismissal was challenged by the petitioner in T. Application No.550 of 1983 before the Labour Court, Ahmedabad under the provisions of B.I.R.Act. In or about January, 1984 the Costing Department of Bagicha Mill Unit No.1 was transferred to Bagicha Mill Unit No.2 after giving increment. Bagicha Mill Unit No.2 has no Costing Department at that time. On 25th May, 1984 Bagicha Mill Unit No.1 was closed and on 1st June, 1984 Bagicha Mill Unit No.2 was closed. Government of Gujarat closed Textile Undertaking (Nationalisation) Ordinance 1985 and took over the management of both Bagicha Mill Unit No.1 and 2 on and with effect from the appointed date 8th November, 1985. Some departments of Bagicha Mill Unit No.2 were restarted by the respondent No.2 Corporation in or around November, 1986 and the entire composite mill was restarted in or around January, 1987. On 15th January, 1987 some persons namely Shri Bhikhubhai Manilal Shah, Prakash Shantikumar Pandya, Harshadbhai Shantilal Halani, those who are junior to the petitioner were reemployed in the category of Clerk in the Costing Department in Bagicha Mill Unit No.2 by the respondent No.3 and three junior has stated above and one senior Shri Krushnavadan Maneklal Desai was also reemployed as a Clerk in Costing Department by respondent No.3 Corporation. The Labour

Court, Ahmedabad has passed an order on 3rd June, 1986 in in T. Application No.550 of 1983 granted reinstatement with full back wages to the petitioner and with a direction to implement the order within 30 days. While setting aside the dismissal order dated 17th June, 1983. The petitioner inform to the respondent No.3 about the result of T. Application and thereafter, the claim was submitted before the Commissioner for Payment for his payment of wages and other benefits. The said request was turned down on the ground that no amount was deposited by the Government with the Commissioner for Payment in respect of Ahmedabad Cotton Manufacturing Company Limited thereafter, petitioner had approached to this court filing Special Civil Application No.3585 of 1988 challenging the inaction of the Corporation to reinstate the petitioner and inaction of Commissioner of Payment to make payments to the petitioner. The said petition has been disposed of by order dated 1st September, 1993. The order passed by this Court in group of such petition including Special Civil Application No.3585 of 1988 is as under :

" In pursuance of the interim directions of the Court, the following amounts in respect of these four workmen in these petitions are deposited in this Court by the Gujarat State Textile Corporation.

Spl.C.A.No. Amount

(Rs.)

5498 of 1989 15,995.95

7796 of 1988 19,150.77

4406 of 1990 14,700.90

3585 of 1988 21,880.60

These amounts are directed to be paid to the concerned workmen by account payee cheques.

In view of these directions, these petitions do not survive. However, it is made clear that the petitioners-workmen have grievances about the calculation and computation of their dues and non payment of retrenchment compensation notice pay and back-wages for part of the period as per the order of the Labour Court. It would be open to the workmen to challenge the orders of Commissioner of Payments before the appropriate forum in accordance with law and disposal of these petitions would not come in their way for such claim. Whatever claim the workmen may have other than the present payment, they are not decided by this order and it would be open to them to agitate all their claims before the

appropriate forum. These four petitions are disposed of accordingly. Rule discharged with no order as to costs." The petitioner has received the payment of Rs.21,818-60Ps. on 12th October, 1993.

The petitioner had filed claim before the Commissioner for Payments in pursuance to the above order passed by this Court by letter dated 12th July, 1993 thereafter, the petitioner was asked to remain present on 9th August, 1993 by letter dated 6th August, 1993 but the said letter received by the petitioner on 12th August, 1993 and thereafter, on 12th August, 1993 without hearing to the petitioner the Commissioner of Payment had passed order and that order is under challenged.

The order passed by the Commissioner of Payment dated 12th August, 1993 Claim No. 158 wherein, the Commissioner of Payment has considered the Section 11 of Gujarat Closed Textile (Undertaking Act, 1986) and held that petitioner is entitled to wages upto 8th November, 1985 and not entitled any further amount, considering the fact that if order passed by the Labour Court is implemented it will affect adversely to other employed workmen those who are similar situated. The Commissioner of Payment has sanctioned the claim of petitioner Rs.20852-62Ps. and it was further held that in respect to the claim of 85 to 89 with 20% interest by the petitioner, the Corporation is not liable to pay any amount prior to the date of 8th November, 1985 and after the date of 8th November, 1985 there is no liability of old management. Therefore, petitioner is not entitled any claim subsequent to 23rd May, 1984 and claim of petitioner for the period 17th June, 1983 to 24th May, 1984 was sanctioned and the said amount has been received by the petitioner. However, the question is required to be examined in respect to the claim of petitioner from 24th May, 1984 to 8th November, 1985 and from 15th January, 1987 to 27th August, 1989 date of superannuation.

Therefore, these are undisputed fact that Mill was closed on 25th May, 1984 and Corporation has taken over the management of both Bagicha Mills Unit No.1 and 2 on and with effect from the appointed date 8th November, 1985. The composite Mill was restarted in January, 1987 and juniors and seniors to the petitioner were reemployed by the Corporation from 15th January, 1987. In the same category of clerk in the Costing Department, the said facts has not been disputed by any of the respondents and no counter has been filed by any of the respondents. Therefore, the Commissioner of Payments who has not

decided the claim of the petitioner for the period from 17th June, 1983 to 8th November, 1985 but, he decided the claim upto the period from 17th June, 1983 to 24th May, 1984. Therefore, petitioner is entitled to wages for the period 24th May, 1984 to 8th November, 1985 from the old management prior to appointed date and that aspect has not been considered by Commissioner for Payments. The second aspect that from 8th November, 1985 appointed date to 15th January, 1987, the petitioner is not entitled to any amount of wages as during this period the Mill was remain closed. But, petitioner is entitled to wages from the date on which the three juniors were absorbed by the Corporation from 15th January, 1987 and one senior is also absorbed in the same category in the same department. Therefore, petitioner is entitled to claim the wages for the period 15th January, 1987 to 27th August, 1989 to the date of superannuation. The above facts are undisputed and no counter has been filed by either of respondents. Therefore, considering the above facts and circumstances, I am directing the Commissioner of Payment to pay the wages to the petitioner from 24th May, 1984 to 8th November, 1985 date of appointed date. The said period is of closure of Bagicha Mill Unit No.1 and 8th November, 1985 is a appointed date under the Act, 1986. The petitioner is also entitled the wages in the post of clerk from the respondent Corporation No.3 for the period 15th January, 1987 to the 27th August, 1989 upto the date superannuation and therefore, it is directed to the respondent No.3 Corporation to pay full wages to the petitioner for the period 15th January, 1987 to 27th August, 1989. The said payments though petitioner is legally entitled but, same has not been paid since long and two rounds of litigations has been carried out and therefore, it is directed to the Commissioner of Payments respondent No.2 to pay full wages to the petitioner for the period 24th May, 1984 to 8th November, 1985 within a period of one month from the date of receiving the writ of this order and it is further directed to the respondent No.3 Corporation to pay full wages for the post of clerk to the petitioner from 15th January, 1987 to 27th August, 1989 upto the date of superannuation to the petitioner within a period of one month from the date of receiving the writ of this Court. If, the said payments are not made by respondent No.2 and 3 respectively to the petitioner within aforesaid period as directed by this Court then respondent No.2 and 3 shall have to pay 12% interest to the petitioner from the date of this order till the actual payment is made to the petitioner by the respondent No.2 and 3. Therefore, this petition is allowed. Rule is made absolute to aforesaid extent, with

no order as to costs.

Date : 27-04-2000. (H.K.RATHOD,J)

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